



## Self-Represented Parties in Administrative Hearings

### Committee on Administration and Management

### Proposed Recommendation | December 14, 2016

1 Federal agencies conduct millions of hearings each year, making decisions that affect  
2 such important matters as disability or veterans' benefits, immigration status, and home or  
3 property loans. In many of these adjudications, claimants appear unrepresented for part or all of  
4 the proceeding and must learn to navigate hearing procedures, which can be quite complex,  
5 without expert assistance. The presence of self-represented parties<sup>1</sup> in administrative hearings  
6 can create challenges for both administrative agencies and for the parties seeking agency  
7 assistance. Further, the presence of self-represented parties raises a number of concerns relating  
8 to the consistency of hearing outcomes and the efficiency of processing cases.

9 Because of these concerns, in the spring of 2015 the Department of Justice's Access to  
10 Justice Initiative asked the Administrative Conference to co-lead a working group on self-  
11 represented parties in administrative hearings, and the Conference agreed. The working group,  
12 which operates under the umbrella of the Legal Aid Interagency Roundtable (LAIR), has been  
13 meeting since that time.<sup>2</sup> During working group meetings, representatives from a number of  
14 agencies, including the Social Security Administration (SSA), Executive Office for Immigration  
15 Review (EOIR), Board of Veterans' Appeals (BVA), Internal Revenue Service (IRS),

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<sup>1</sup> The term "self-represented" is used to denote parties who do not have professional representation, provided by either a lawyer or an experienced nonlawyer. Representation by a non-expert family member or friend is included in this recommendation's use of the term "self-represented." Administrative agencies generally use the term "self-represented," in contrast to courts' use of the term *pro se*. Because this recommendation focuses on agency adjudication, it uses the term "self-represented," while acknowledging that the two terms are effectively synonymous.

<sup>2</sup> LAIR was established in 2012 by the White House Domestic Policy Council and the Department of Justice. *See White House Legal Aid Interagency Roundtable*, U.S. DEP'T OF JUST., <https://www.justice.gov/lair> (last visited Aug. 16, 2016). It was formalized by presidential memorandum in the fall of 2015. *See Memorandum from the President to the Heads of Exec. Dep'ts and Agencies* (Sept. 14, 2015), <https://www.whitehouse.gov/the-press-office/2015/09/24/presidential-memorandum-establishment-white-house-legal-aid-interagency>.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

16 Department of Health and Human Services (HHS), Department of Agriculture (USDA), and  
17 Department of Housing and Urban Development (HUD) participated and shared information  
18 about their practices and procedures relating to self-represented parties. In working group  
19 meetings, agency representatives agreed that hearings involving self-represented parties are  
20 challenging, and expressed interest both in learning more about how other agencies and courts  
21 handle self-represented parties and in improving their own practices. This recommendation, and  
22 its accompanying report,<sup>3</sup> arose in response to those concerns.<sup>4</sup>

23 While civil courts have long recognized and worked to address the challenges introduced  
24 by the presence of self-represented parties, agencies have increasingly begun to focus on issues  
25 relating to self-representation only in recent years. Agencies are undertaking numerous efforts to  
26 accommodate self-represented parties in their adjudication processes.<sup>5</sup> Yet quantitative  
27 information on self-representation in the administrative context is comparatively scarce, and  
28 there is much insight to be gained from the civil courts in identifying problems and solutions  
29 pertaining to self-representation. Although there are important differences between procedures  
30 in administrative hearings and those in civil courts, available information indicates that the two  
31 contexts share many of the same problems—and solutions—when dealing with self-represented  
32 parties.

33 Challenges related to self-represented parties in administrative hearings can be broken  
34 down into two main categories: those pertaining to the efficiency of the administrative  
35 proceeding and those relating to the outcome of the procedure.

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<sup>3</sup> Connie Vogelmann, *Self-Represented Parties in Administrative Hearings* (Sept. 7, 2016), <https://www.acus.gov/sites/default/files/documents/Self-Represented-Parties-Administrative-Hearings-Draft-Report.pdf>.

<sup>4</sup> This recommendation primarily targets the subset of administrative agencies that conduct their own administrative hearings. Components of a number of federal agencies—including HUD, HHS, and USDA—do not conduct hearings directly, and instead delegate adjudication responsibilities to state or local entities. Because the challenges facing these agencies are quite distinct, they are not addressed in this recommendation.

<sup>5</sup> Vogelmann, *supra* note 3, at 28–50.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

36 From an efficiency standpoint, self-represented parties' lack of familiarity with agency  
37 procedures and administrative processes can cause delay both in individual cases and on a  
38 systemic level. Delays in individual cases may arise when self-represented parties fail to appear  
39 for scheduled hearings, file paperwork incorrectly or incompletely, do not provide all relevant  
40 evidence, or make incoherent or legally irrelevant arguments before an adjudicator. In the  
41 aggregate, self-represented parties also may require significant assistance from agency staff in  
42 filing their claims and appeals, which can be challenging given agencies' significant resource  
43 constraints. Finally, self-represented parties may create challenges for adjudicators, who may  
44 struggle to provide appropriate assistance to them while maintaining impartiality and the  
45 appearance of impartiality. These problems are exacerbated by the fact that many agencies hear  
46 significant numbers of cases by self-represented parties each year.

47 Self-represented parties also may face suboptimal outcomes in administrative  
48 proceedings compared to their represented counterparts, raising issues of fairness. Even  
49 administrative procedures that are designed to be handled without trained representation can be  
50 challenging for inexperienced parties to navigate, particularly in the face of disability or  
51 language or literacy barriers. Furthermore, missed deadlines or hearings may result in a self-  
52 represented party's case being dismissed, despite its merits. Self-represented parties often  
53 struggle to effectively present their cases and, despite adjudicators' best efforts, may receive  
54 worse results than parties with representation.

55 Civil courts face many of these same efficiency and consistency concerns, and in  
56 response have implemented wide-ranging innovations to assist self-represented parties. These  
57 new approaches have included in-person self-service centers; workshops explaining the hearing  
58 process or helping parties complete paperwork; and virtual services such as helplines accessible  
59 via phone, email, text, and chat. Courts have also invested in efforts to make processes more  
60 accessible to self-represented parties from the outset, through the development of web resources,  
61 e-filing and document assembly programs, and plain language and translation services for forms  
62 and other documents. Finally, courts have also used judicial resources and training to support



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

63 judges and court personnel in their efforts to effectively and impartially support self-represented  
64 parties.

65         These innovations have received extremely positive feedback from parties, and early  
66 reports indicate that they improve court efficiency and can yield significant cost savings for the  
67 judiciary.<sup>6</sup> Administrative agencies have also implemented, or are in the process of  
68 implementing, many similar innovations.<sup>7</sup>

69         This recommendation builds on the successes of both civil courts and administrative  
70 agencies in dealing with self-represented parties and makes suggestions for further improvement.  
71 In making this recommendation, the Conference makes no normative judgment on the presence  
72 of self-represented parties in administrative hearings. This recommendation assumes that there  
73 will be circumstances in which parties will choose to represent themselves, and seeks to improve  
74 the resources available to those parties and the fairness and efficiency of the overall  
75 administrative process.

76         The recommendation is not intended to be one-size-fits-all, and not every  
77 recommendation will be appropriate for every administrative agency. To the extent that this  
78 recommendation requires additional expenditure of resources by agencies, innovations are likely  
79 to pay dividends in increased efficiency and consistency of outcome in the long term.<sup>8</sup> The goals  
80 of this recommendation are to improve both the ease with which cases involving self-represented  
81 parties are processed and the consistency of the outcomes reached in those cases.

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<sup>6</sup> Richard Zorza, *Trends in Self-Represented Litigation Innovation*, in *FUTURE TRENDS IN STATE COURTS* 85 (Carol R. Flango et al. eds., 2006). *See generally* JOHN GREACEN, *THE BENEFITS AND COSTS OF PROGRAMS TO ASSIST SELF-REPRESENTED LITIGANTS* (2009).

<sup>7</sup> Vogelmann, *supra* note 3, at 28–50.

<sup>8</sup> *See generally* GREACEN, *supra* note 6.



## RECOMMENDATION

### Agency Resources

- 82 1. Agencies should consider investigating and implementing triage and diagnostic tools to  
83 direct self-represented parties to appropriate resources based on both the complexity of  
84 their case and their individual level of need. These tools can be used by self-represented  
85 parties themselves for self-diagnosis or can be used by agency staff to improve the  
86 consistency and accuracy of information provided.
- 87 2. Agencies should strive to develop a continuum of services for self-represented parties,  
88 from self-help to one-on-one guidance, that will allow parties to obtain assistance by  
89 different methods depending on need. In particular, and depending on the availability of  
90 resources, agencies should:
- 91 a. Use websites to make relevant information available for parties to access and  
92 expand e-filing opportunities;
- 93 b. Continue efforts to make forms and other important materials accessible to self-  
94 represented parties by providing them in plain language, in both English and in  
95 other languages as needed, and by providing effective assistance for persons with  
96 special needs; and
- 97 c. Provide a method for self-represented parties to communicate in “real-time” with  
98 agency staff or agency partners, as appropriate.
- 99 3. Subject to the availability of resources and as permitted by agency statutes and  
100 regulations, agencies should provide training for adjudicators for dealing with self-  
101 represented parties, including providing guidance for how they should interact with self-  
102 represented parties during administrative hearings. Specifically, training should address  
103 interacting with self-represented parties in situations of limited literacy or English  
104 proficiency or mental or physical disability.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### **Data Collection and Agency Coordination**

- 105 4. Agencies should strive to collect the following information, subject to the availability of  
106 resources, and keeping in mind relevant statutes including the Paperwork Reduction Act,  
107 where applicable. Agencies should use the information collected to continually evaluate  
108 and revise their services for self-represented parties. In particular, agencies should:
- 109 a. Seek to collect data on the number of self-represented parties in agency hearings.  
110 In addition, agencies should collect data on their services for self-represented  
111 parties and request program feedback from agency personnel.
  - 112 b. Seek to collect data from self-represented parties about their experiences during  
113 the hearing process and on their use of self-help resources.
  - 114 c. Strive to keep open lines of communication with other agencies and with civil  
115 courts, recognizing that in spite of differences in hearing procedures, other  
116 adjudicators have important and transferable insights in working with self-  
117 represented parties.

### **Considerations for the Future**

- 118 5. In the long term, agencies should strive to re-evaluate hearing procedures with an eye  
119 toward accommodating self-represented parties. Hearing procedures are often designed  
120 to accommodate attorneys and other trained professionals. Agencies should evaluate the  
121 feasibility of navigating their system for an outsider, and make changes—as allowed by  
122 their organic statutes and regulations—to simplify their processes accordingly. Although  
123 creation of simplified procedures would benefit all parties, they would be expected to  
124 provide particular assistance to self-represented parties.